

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Enoch Sowah	Team: Squad #7	CCRB Case #: 201806632	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 08/10/2018 7:15 PM	Location of Incident: 161 St & River Ave; Yankee Stadium Police Detail Stationhouse; En route to Manhattan Central Booking		Precinct: 44	18 Mo. SOL 2/10/2020	EO SOL 2/10/2020
Date/Time CV Reported Mon, 08/13/2018 3:31 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Mon, 08/13/2018 3:31 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Edward McClain	14159	943544	PBBX
2. LT Paul Gaglio	00000	900141	PBBX
3. POM Marcello Solano	7497	955517	PBBX

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Robert Miceli	12143	950886	PBBX
2. POM Lanser Montilla	05568	953132	PBBX
3. POM Harry Pell	07048	952100	PBBX
4. POM Brian Hanlon	05831	950459	PBBX

Officer(s)	Allegation	Investigator Recommendation
A.POM Edward McClain	Discourtesy: At 161st Street and River Avenue in the Bronx, Police Officer Edward McClain spoke discourteously to § 87(2)(b)	§ 87(2)(g)
B.POM Edward McClain	Abuse: At 161st Street and River Avenue in the Bronx, Police Officer Edward McClain threatened to issue summons to § 87(2)(b)	§ 87(2)(g)
C.LT Paul Gaglio	Force: At 161st Street and River Avenue in the Bronx, Lieutenant Paul Gaglio used a chokehold against § 87(2)(b)	§ 87(2)(g)
D.POM Edward McClain	Force: At the Yankee Stadium Police Detail Stationhouse, Police Officer Edward McClain used physical force against § 87(2)(b)	§ 87(2)(g)
E.POM Edward McClain	Discourtesy: At the Yankee Stadium Police Detail Stationhouse, Police Officer Edward McClain spoke discourteously to § 87(2)(b)	§ 87(2)(g)
F.POM Edward McClain	Discourtesy: En route to Manhattan Central Booking, Police Officer Edward McClain spoke discourteously to § 87(2)(b)	§ 87(2)(g)

Officer(s)	Allegation	Investigator Recommendation
G.POM Marcello Solano	Discourtesy: En route to Manhattan Central Booking, Police Officer Marcello Solano spoke discourteously to § 87(2)(b)	§ 87(2)(g)

Case Summary

On August 13, 2018, § 87(2)(b) filed this in-person complaint with the CCRB.

On August 10, 2018, at approximately 7:15 p.m., in the vicinity of East 161st Street and River Avenue in the Bronx, Police Officer Edward McClain of the Patrol Borough Bronx allegedly spoke discourteously towards § 87(2)(b) (**Allegation A: Discourtesy, § 87(2)(g)**), and allegedly threatened to issue him a summons (**Allegation B: Abuse of Authority, § 87(2)(g)**). Lieutenant Paul Gaglio of Patrol Borough Bronx allegedly used a chokehold against § 87(2)(b) (**Allegation C: Force, § 87(2)(g)**). At the Yankee stadium police detail stationhouse, PO McClain allegedly used physical force against § 87(2)(b) and spoke discourteously towards him (**Allegation D: Force, § 87(2)(g)**; **Allegation E: Discourtesy, § 87(2)(g)**). PO McClain and PO Macello Solano of the Patrol Borough Bronx spoke allegedly discourteously to § 87(2)(b) while transporting him to Manhattan Central Booking (MCB) (**Allegations F and G: Discourtesy, § 87(2)(g)**).

§ 87(2)(b)

§ 87(2)(b) recorded a 17-second video of this incident on his cell phone (BR02).

Findings and Recommendations

Allegation (A) Discourtesy: At 161st Street and River Avenue in the Bronx, Police Officer Edward McClain spoke discourteously to § 87(2)(b)

Allegation (B) Abuse of Authority: At 161st Street and River Avenue in the Bronx, Police Officer Edward McClain threatened to issue summons to § 87(2)(b)

Allegation (C) Force: At 161st Street and River Avenue in the Bronx, Lieutenant Paul Gaglio used a chokehold against § 87(2)(b)

§ 87(2)(b) said (BR03) said he was standing at the corner of 161st Street and River Avenue in the Bronx, and was waiting for his son to arrive so they could head to Yankee stadium and watch a baseball game. At some point, PO McClain, PO Solano, and Police Officers Robert Miceli and Harry Pell all of Patrol Borough Bronx, § 87(2)(g) approached § 87(2)(b). PO McClain pointed at § 87(2)(b) and said to the other officers, “That’s my friend the asshole from the last time.” § 87(2)(b) recognized PO McClain and the officers from a number of prior interactions where he was arrested in the vicinity for allegedly soliciting and selling unauthorized New York Yankees game tickets. § 87(2)(b) told the officers he did not want to be bothered and asked to be left alone. PO McClain allegedly said to § 87(2)(b) “Don’t tell me how to do my fucking job on my corner. This is my street and I do what I want.” PO McClain then ordered § 87(2)(b) to leave the location or that he would be issued a summons. § 87(2)(b) refused and the officers walked away.

PO McClain and the three other officers, however, returned approximately five minutes later, and ordered § 87(2)(b) to produce his ID card. § 87(2)(b) complied and gave his ID to PO McClain. He then took out his cell phone and began to record the officers. PO McClain instructed the officers to arrest § 87(2)(b) and take his phone from his hands. Two of the officers, none of whom § 87(2)(b) could describe, grabbed § 87(2)(b)’s arms, placed them behind his back, and handcuffed him. One of the unidentified officers then took § 87(2)(b)’s cell phone from his hands. (A physical force allegation was not pleaded against the officers because the force § 87(2)(b) described was consistent with force used in handcuffing. An interference with recording device allegation was also not pleaded because the

cell phone was taken from § 87(2)(b)'s hands during handcuffing and did not appear to be an attempt to prevent him from recording the officers).

§ 87(2)(b) slightly turned his body towards the officers and attempted to ask them why he was handcuffed. Lt. Gaglio, identified via investigation, reached his arms around § 87(2)(b)'s shoulder blade and made contact with § 87(2)(b)'s neck, and applied slight and brief pressure to § 87(2)(b)'s neck. § 87(2)(b) yelled, "Why are you choking me?" at which point Lt. Gaglio immediately removed his arm. PO McClain then escorted § 87(2)(b) to the Yankee stadium police detail stationhouse, which was a few feet away.

§ 87(2)(b) said his son never arrived to witness this incident, but that he saw his friend, § 87(2)(b) at the location, and that it was possible § 87(2)(b) might have witnessed this incident. The factual allegation section of the summonses § 87(2)(b) received indicated that he and another individual, § 87(2)(b) were observed around Yankee stadium walking towards patrons and asking them if they wanted to buy unauthorized game tickets, and that PO McClain issued both men disorderly conduct summonses.

§ 87(2)(b) (BR04) and § 87(2)(b) (BR05) both provided phone statements to the CCRB, but they both denied witnessing the interaction between § 87(2)(b) and the officers, except that they saw the officers approaching § 87(2)(b) handcuffing him, and escorting him to the detail stationhouse. § 87(2)(b) and § 87(2)(b) both did not hear the officers use any form of profanities against § 87(2)(b) nor did they see any officer use a chokehold or any other form of force against him.

The cell phone video § 87(2)(b) recorded does not depict the alleged chokehold or any discourteous statements. The footage, however shows PO Solano, PO Miceli, PO Montilla, and PO Pell, all standing around § 87(2)(b) while PO McClain writes him what appears to be a summons. Lt. Gaglio, PO Brian Hanlon of the Patrol Borough Bronx, and § 87(2)(b) standing in the middle of the street, and are approximately 20 feet away from § 87(2)(b) and the other officers. At 00:11, PO McClain yells, "Under. He's under." The officers appear to approach § 87(2)(b) at which point the video ends at 00:17 minutes.

PO McClain (BR06) said he and members of his team were assigned to patrol the vicinity of Yankee stadium to prevent the sale of unauthorized season game tickets and trademarked merchandise. At some point, PO McClain saw § 87(2)(b) and § 87(2)(b) both of whom he had arrested multiple times for scalping and sale of illegal game tickets, around the stadium. He thus approached them and ordered them to leave the location. PO McClain did not recall if he approached the two men with other officers, nor did he recall observing them selling or attempting to sell unauthorized tickets to patrons, but said he asked them to leave the location because of their notoriety for scalping. § 87(2)(b) and § 87(2)(b) both refused to leave. PO McClain ordered them to produce their ID cards, and they complied.

PO McClain performed warrant checks for § 87(2)(b) and § 87(2)(b) on his handheld device. The search yielded negative results for § 87(2)(b) but positive results for § 87(2)(b). PO McClain issued § 87(2)(b) a disorderly conduct summons (BR07) and ordered him to leave the location. PO McClain issued § 87(2)(b) two disorderly conduct summonses and arrested him for the active warrants. PO McClain did not recall how § 87(2)(b) and § 87(2)(b) behaviors constituted disorderly conduct. PO McClain did not recall if any officers assisted in the arrest of § 87(2)(b) nor did he recall if § 87(2)(b) resisted, but said no force was used against § 87(2)(b). PO McClain did not recall seeing Lt. Gaglio or any other officer using a chokehold against § 87(2)(b) nor did he recall using any profanities against § 87(2)(b).

Lt. Gaglio (BR08) said that he was inside the detail stationhouse when PO McClain entered and said he had observed § 87(2)(b) in the vicinity of Yankee stadium, and that he believed § 87(2)(b) had active warrants. Lt. Gaglio said § 87(2)(b) was one of known scalpers in the neighborhood, who he and his team members were familiar with and were always on the lookout for during the Yankees home games. PO McClain performed a warrant audit for § 87(2)(b) on the department computer and confirmed that he had open warrants. PO McClain, Lt. Gaglio, and the other members of the team all left the stationhouse and headed towards § 87(2)(b). Lt. Gaglio said § 87(2)(b) had a reputation for acting belligerently and making threatening and insensitive statements towards him and his officers, thus they all decided to approach § 87(2)(b) to ensure they safety and also make sure he was not belligerent and aggressive.

Upon arrival, Lt. Gaglio and PO Hanlon saw § 87(2)(b) another known scalper, standing in the middle of the street, and approached him, while PO McClain and the other officers approached § 87(2)(b) on the sidewalk. Lt. Gaglio did not recall approaching and interacting with § 87(2)(b) nor did he recall what the officers did once they approached § 87(2)(b) except that PO McClain issued him the two disorderly conduct summonses, arrested him for the open warrants, and escorted him to the detail stationhouse. Lt Gaglio denied using a chokehold against § 87(2)(b) nor did he recall hearing PO McClain or any other officer using profanities towards § 87(2)(b).

PO Solano (BR09), PO Miceli (BR10), and PO Pell (BR11), all had no independent recollection of this incident, except that § 87(2)(b) was issued two summonses and arrested for open warrants. They all did not recall hearing PO McClain or any other officer using profanities against § 87(2)(b) nor did they recall seeing Lt. Gaglio or any other officer using a chokehold or any other force against § 87(2)(b).

§ 87(2)(b), § 87(2)(g)
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§ 87(2)(b).

Allegation (D) Force: At the Yankee Stadium Police Detail Stationhouse, Police Officer Edward McClain used physical force against § 87(2)(b)

Allegation (E) Discourtesy: At the Yankee Stadium Police Detail Stationhouse, Police Officer Edward McClain spoke discourteously to § 87(2)(b)

§ 87(2)(b) said inside the stationhouse, PO McClain ordered him remove his shoes and shoe laces before being lodged in the holding cell. § 87(2)(b) refused. PO McClain then allegedly kicked § 87(2)(b) on his right knee approximately two times, and said to § 87(2)(b) “Next time I tell you to fucking do something, you do it.” PO McClain lodged § 87(2)(b) in the holding cell and left. § 87(2)(b) did not sustain any physical injuries as a result of the alleged force, nor did he recall seeing any prisoners or officers in the holding cell when PO McClain allegedly used force and spoke discourteously towards him.

PO McClain had no recollection of this incident, and denied using any form of force against § 87(2)(b) nor did he recall making the alleged discourteous statements towards § 87(2)(b).

Lt. Gaglio, PO Solano, PO Pell, and PO Miceli, all had no recollection of this incident, and said they did not witness any interactions between § 87(2)(b) and PO McClain inside the stationhouse.

§ 87(2)(g)

Allegation (F) Discourtesy: En route to Manhattan Central Booking, Police Officer Edward McClain spoke discourteously to § 87(2)(b)

Allegation (G) Discourtesy: En route to Manhattan Central Booking, Police Officer Marcello Solano spoke discourteously to § 87(2)(b)

§ 87(2)(b) said that PO McClain and PO Solano transported him via a prisoner's van to MCB, and that en route to MCB, he told the officers that they had cost him a lot of money because he had purchased game tickets worth \$200 for him and his son to watch the Yankees play. PO McClain said to § 87(2)(b) "I fucking mess with you when I want to." § 87(2)(b) asked PO McClain why he was being disrespectful and that PO McClain just confirmed that he a personal vendetta against him. PO McClain replied, "Why do I need a personnel vendetta against you. You are a fucking asshole." PO Solano laughed and said to § 87(2)(b) "Yea you are a fucking asshole. I don't know how your fucking family deals with you." PO Solano and PO McClain both said to § 87(2)(b) "enjoy your fucking night" and "get the fuck outta here," when they arrived at MCB.

PO Solano and PO McClain both had no recollection of this incident, except that they transported § 87(2)(b) to MCB. They both did not recall any interactions with § 87(2)(b) but said he used profanities and made threatening statements towards them, but they did not recall what he said, nor did they recall if they responded. PO Solano and PO McClain both did not recall making any of the alleged statements towards § 87(2)(b).

§ 87(2)(b), § 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b)
 - § 87(2)(b)
 - § 87(2)(b)
 - § 87(2)(b)
 - § 87(2)(b)

- Lt. Gaglio has been a member-of-service for 27-years and has been a named subject in 12 CCRB complaints and 21 allegations, one of which was substantiated, and another which remains open:
 - Case #201506103 involved a substantiated chokehold allegation against Lt. Gaglio. The Board recommended charges. The NYPD is yet to impose discipline.
- PO McClain has been a member-of-service for 12 years and has been a named subject in seven CCRB complaints and 18 allegations, two of which were substantiated, and one of which remains open:
 - Case # 201209982 involved two substantiated allegations of force with a vehicle. The Board recommended charges. The NYPD disposition is unknown.
 - PO McClain has two discourtesy-word allegations pleaded against him stemming from two separate complaints, which were closed as unsubstantiated and complainant uncooperative, respectively.
- PO Solano has been a member-of-service for five-years and this is the first CCRB complaint to which he has been a subject.

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- On March 20, 2019, a Notice of Claim inquiry was sent to the NYC Office of the Comptroller, and the inquiry is still pending. The results will be added to the case file upon receipt (BR13).

• § 87(2)(b) [REDACTED]
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 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

Squad No.: _____

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date